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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/050,238

01/16/2002

Michael Paul Aronson

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EXAMINER

KANTAMNENI, SHOBHA

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

11/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/050,238	Applicant(s) ARONSON ET AL.	
	Examiner Shobha Kantamneni	Art Unit 1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: NONE.
 Claim(s) objected to: _____.
 Claim(s) rejected: 3-7,9-13 and 19-23.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
 See page 2.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Shengjun Wang/
 Primary Examiner, Art Unit 1617

Continuation of 11: Applicant's arguments, have been considered, but not found persuasive as discussed in the final office action, and those found below. All the rejections of record are Maintained.

Applicant argues that " Glenn teaches directly away from use of trihydroxystearin (taught as "stabilizer") in oil phase since one of ordinary skill would believe the stabilizer would decrease deposition of oil rather than increase it". These arguments have been considered, but not found persuasive. Glenn et al. do not teach away from the use of trihydroxystearin in the oil phase. Glenn teaches various structurants for oil-phase which include fats, fatty acid derivatives, solid fatty acid ester, fatty alcohols etc. Trihydroxy stearin can be added to oil phase according to Glenn et al., since trihydroxy stearin is a fatty acid ester, and Glenn et al. teach that oil phase can contain fatty acid derivatives, solid fatty esters, fatty alcohols etc.

Glenn et al. broadly teach that stabilizers for aqueous phase include organic or inorganic stabilizers such as trihydroxystearin or clay or silica as instantly claimed, and structurants for oil-phase include organic structurants such as fats, fatty acid derivatives, solid fatty esters, fatty alcohols wax, petrolatum etc. Glenn et al. teaches a process for making oil-in-water compositions which involves mixing of said structured oil phase and said aqueous phase. Accordingly, the process taught by Glenn et al. is same as the instant process for making wet-skin treatment composition. Glenn et al. provide an example with trihydroxystearin in the aqueous phase, and petrolatum as structurant in the mineral oil-phase. Thus even though Glenn et al. does not exemplify the instant structurant trihydroxystearin in the oil phase, it has been well-established that consideration of a reference is not limited to the preferred embodiments or working examples, but extends to the entire disclosure for what it fairly teaches, when viewed in light of the admitted knowledge in the art, to person of ordinary skill in the art. In re Boe, 355 F.2d 961, 148 USPQ 507, 510 (CCPA 1966); In re Lamberti, 545 F.2d 747, 750, 192 USPQ 279, 280 (CCPA 1976); In re Fracalossi, 681 F.2d 792, 794, 215 USPQ, 570 (CCPA 1982); In re Kaslow, 707 F.2d 1366, 1374, 217 USPQ 1089, 1095 (Fed. Cir. 1983). Glenn et al. utilizes trihydroxystearin as a representative stabilizer for aqueous phase. Glenn et al. teaches broadly that other stabilizers such as clay or silica can be employed in the aqueous phase as instantly claimed. Glenn et al. broadly teaches various structurants such as organic structurants such as fats, fatty acid derivatives, solid fatty esters, fatty alcohols wax, petrolatum, solid polyol fatty acid esters etc. in the oil phase. Glenn et al. teaches a process for making oil-in-water predispersion which involves mixing of said structured oil phase and said aqueous phase which is same as instant process.

Tsuar teaches the advantage of using in line screen process, such as better control of droplet size. Accordingly, one of ordinary skill in the art at the time of invention was made would have been motivated to employ a process wherein the oil-in-water predispersion of Glenn et al. can be passed through a screen having an opening of up to about 2000 micrometers with reasonable expectation of having better control on the droplet size in the emulsion.

Applicant's remarks with respect to the Declaration of Michael P.Aronson mailed on Febraury 1, 2005 have been considered, but not found persuasive as discussed in the previous office actions and those found above.